

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PATRICIA RAE JIMKOSKI, Personal  
Representative of the Estate of ALGER ANTHONY  
JIMKOSKI, Deceased, a legally incapacitated Adult,

Plaintiff,

Case No.: 02-CV71701  
Hon. Woods  
Magistrate Judge Carlson

v

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

\_\_\_\_\_  
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**PLAINTIFF'S RESPONSE TO DEFENDANT'S**  
**MOTION FOR SUMMARY DISPOSITION**  
**AND BRIEF IN SUPPORT**

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**PLAINTIFF'S RESPONSE TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT AND/OR  
JUDGMENT ON THE PLEADINGS**

NOW COMES Plaintiffs, by and through their attorneys, Thomas, Garvey, Garvey & Sciotti, and in response to Defendant's Motion for Summary Disposition, states as follows:

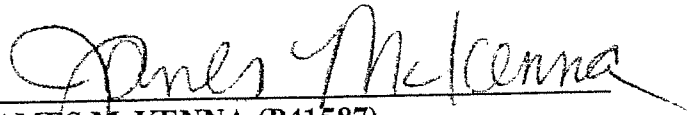
3. Plaintiff admits.
4. Plaintiff admits.
5. Plaintiff neither admits nor denies but would leave Defendant, State Farm to their proofs.
6. Plaintiff denies. Defendant, in the body of their Motion, admits that the one year back statute of limitations does not apply to this cause of action as it relates to Mr. Alger Jimkoski. To indicate that Plaintiff is bringing this claim "irrespective of the one year period of limitations set forth in MCL 500.3145" is incorrect.
7. Plaintiff denies. Defendant is not entitled to a dismissal of the complaint. This claim was brought timely pursuant to the Michigan Revised Judicature Act tolling provision of the Michigan Statute of Limitations and further, the actions of Defendant, State Farm, its agents, servants, employees and assigns in handling this claim have committed active fraud repeatedly and consistently. Further, Defendant indicates that Mrs. Jimkoski is attempting to renegotiate State Farm's payments when Mrs. Jimkoski was never a party to a negotiation. The proofs will show that Defendant, State Farm, unilaterally and arbitrarily set an amount of compensation that was inadequate, fraudulent and violated the

Michigan No Fault Act.

WHEREFORE, Plaintiff respectfully requests this Honorable Court deny Defendant's Motion as the same is unwarranted based upon the facts and case law presented.

Respectfully submitted,

THOMAS, GARVEY, GARVEY & SCIOTTI



**JAMES MCKENNA (P41587)**

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Dated: October 9, 2003

**BRIEF IN RESPONSE TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT AND/OR  
JUDGMENT ON THE PLEADINGS**

**STATEMENT OF ISSUES PRESENTED**

- I. The Defendant is not entitled to dismissal of Plaintiff's Complaint in part or whole. This claim is not barred by the one year back period of limitations set forth in MCL 500.3145 and the active fraud by Defendant and its agents preclude the running of the statute of limitations.
- II. Defendant has not fulfilled its legal obligations with regard to Plaintiff's claims for wage loss benefits, replacement services and medical mileage.
- III. The Defendant is not entitled to dismissal of any of the counts of Plaintiff's Complaint because the remedy sought are afforded under the Michigan No Fault Act.

**STATEMENT OF FACTS**

This cause of action arises out of an automobile accident that occurred on October 26,

1976 near Bad Axe, Michigan. At the time of the accident, Alger Jimkoski was forty one years old, married for eighteen years and the father of six children. For most of his married life, Mr. Jimkoski had lived in the Bad Axe area with his wife and children. At the time of the accident, he was employed with an electric company. He owned a forty acre working farm that included various live stock, crops and equipment. His children, at the time of the accident, ranged from six years old to seventeen years old.

In the automobile accident, Mr. Jimkoski was driving his tractor when he was rear ended by a pick up truck traveling at an excessive rate of speed. Following the accident, Mr. Jimkoski was thrown over one hundred feet in the air. All but one wheel of the tractor were detached and he was in a coma. Mr. Jimkoski spent a significant period of time in a coma and under treatment in Saginaw Hospital. As a result of the accident, Mr. Jimkowski suffered chronic headaches, back, neck and joint pain. Numbness and loss of sensation throughout his body which resulted in clumsiness, loss of vision in one eye, impaired vision in the other, blackout spells during which he would fall. Poured and inhibited balance control, urinary and bowel incontinence. Loss of taste and smell. Softening of his teeth and gums due to the use of Dilantin, medication for seizures. Temporal Mandibular Joint Dysfunction (TMJ) causing a grinding of the teeth. Hypoglycemia from stress reaction as well as sexual dysfunction. Mr. Jimkoski was found to have suffered all of these injuries from the time of his automobile accident until the time of his death on August 14, 2000.

In 1973, the Michigan Legislature adopted and enacted the Michigan No Fault Act. Under the Michigan No Fault Act, State Farm was liable to pay benefits to an insured such as

Mr. Jimkoski whenever they were injured arising out of the use, operation and/or maintenance of a motor vehicle as a motor vehicle. On October 26, 1976, Mr. Jimkoski was rear ended while operating a tractor by a pick up truck traveling at a high rate of speed. As a result of the collision, all but one of the wheels of the tractor were separated and dislodged and Mr. Jimkoski was thrown over one hundred feet and ended up in a coma. Since that accident, he had suffered permanent injuries, including traumatic brain injuries. From the time of the accident until Mr. Jimkoski's death on August 14, 2000, his condition never got better, but in fact, deteriorated.

As a result of injuries sustained in the accident, Mr. Jimkoski was repeatedly hospitalized in a psychiatric ward at Harper Rehab and Detroit Receiving and diagnosed as being homicidal, suicidal, severely combative and disassociative. For the remainder of his life since the automobile accident, he was under the care of Dr. Raymond Mercier, a psychiatrist. He also was treated by Dr. Mary Ann Guidice, a neurologist, specializing in closed head injury treatment.

Both Dr. Mercier, a board certified psychiatrist and Dr. Guidice, a board certified neurologist have authored Affidavits indicating that as a result of this injuries sustained in the automobile accident, that Mr. Jimkoski was unable to recognize and/or understand his legal rights. Defendant is aware that the Michigan Revised Judicature Act MCL 600.5851(1) applies to this claim by Mr. Jimkoski and would prevent toll the running of any statute of limitation contained within the Michigan No Fault Act itself. *(Please see Exhibit A - Affidavits of Dr. Mercier and Dr. Guidice).*



For seven years following the automobile accident, Mrs. Jimkoski was providing nursing care around the clock of her husband. She would take care of soiled clothes. She would take him to the bathroom. She would feed him. She would provide him his medication. She would provide physical therapy for him. She provided 24 hour care. Mrs. Jimkoski had inquired of State Farm regarding attendant care benefits for caring for her husband following the accident. Mrs. Jimkoski was told by adjusters at State Farm that she was not entitled to be paid anything for caring for her husband that those were her "wifely duties." *Please see Group Exhibit B, Deposition Transcript of Mrs. Jimkoski.*

Lilian Soloarz was one of the original adjusters on Mr. Jimksoki's case. She has testified in her deposition that it was her position with State Farm, as told to her by State Farm, that they were to tell insureds they would not pay for attendant care with family members. *(Please see Group Exhibit C, Deposition Transcript of Lilian Solarz).*

Mrs. Jimkoski has testified that she relied completely on State Farm and trusted them in what benefits her husband was entitled to. For the next seven years, she did not receive any payment whatsoever for the attendant care. On April 20, 1983, Defendant's Supervisor of Claims made a notation in the Adjuster's Claim Activity Log indicating that he had reviewed a lengthy report from International Rehabilitation Associates, Inc. (IRA) and that he concurred with all of the recommendations set forth. The supervisor then indicated "its rather obvious Mrs. Jimkoski has been a nurse to this EIP (eligible injured person) since the accident and we have paid nothing for these services. From this date on, we will pay \$30.00 per day. For past services rendered, we will pay for their car - required to get him to and from the doctor, etc.

The payoff is \$2,697.62. If it were not for the wife, we would have to maintain EIP in a medical facility. . . don't include bank on draft - simply indicate for past medical nursing care (Please see Exhibit D). —

Defendant, State Farm, hired a nursing case manager, Lynne Tonsfeldt, from International Rehabilitation Associates to review and examine all of Mr. Jimkoski's care and his needs. The report dated April 11, 1983 indicates under medical that Mr. Jimkoski suffers from these physical complaints following the accident: 1) Chronic headaches; 2) back, neck and joint pain; 3) numbness and loss of sensation in much of his body resulting in clumsiness; 4) loss of vision in one eye and impaired vision in the other eye; 5) blackout spells during which he falls; 6) poor balance; 7) urinary and fecal urgency with occasional incontinence; 8) loss of smell and taste; 9) softening of the teeth and gums due to Dilantin for seizures; 10) possible TMJ Temporal Mandibular Joint Dysfunction from grinding teeth; 11) hypoglycemia from stress reaction; 12) sexual dysfunction. *(Please see Exhibit E).*

In May of 1997, Defendant, State Farm, had hired Anne Lorentzen, to act as a case manager for Mr. Jimkoski. She wrote a report dated May 5, 1997 indicating that she had been acting as case manager since 1988. She gave a history of Mr. Jimkoski's hospitalizations for homicidal rage, violence and explosive temper outburst directed towards his wife as well as his son-in-law. She noted that Dr. Mercier, his board certified psychiatrist had been involved in his care since 1978. She also noted that Dr. Mercier found Mr. Jimkoski to suffer from: 1) detached retina right eye and right optic nerve injury; 2) irritability with angry outbursts; 3) loss of control of urine as a result of neurogenic bladder; 4) neck and back pain; 5) no sense of taste

or smell; 6) loss of sense of feeling over the entire body; 7) hypoglycemia secondary to stress of the accident of 1976; 8) emotional deterioration reducing performance in verbal and performance IQ; 9) passive dependent personality; 10) massive psychophysiologic reaction with anxiety and depression; 11) traumatic neurosis; 12) bilateral cerebral dysfunction secondary to closed head injury; 13) moderate degenerative changes in the cervical spine and thoracic/lumbar spine; 14) depressive reaction, severe. In addition, under her impressions, she indicated that Alger has not changed since 1988 and the medical records prior to that date were indicating that they did not feel significant changes were to be made. She also noted the family was suffering with the extra financial burden to Mr. Jimkoski's multiple problems including the fact that they had "lost the farm due to back taxes and have a home and three acres mortgaged to meet their daily needs. Mrs. Jimkoski has been his guardian and conservator since 1976 or 77." *(Please see Exhibit F).*

Mrs. Lorentzen was hired by Defendant, State Farm, to act as a case manager supposedly to lookout for the best interest of Mr. and Mrs. Jimkoski and their family as a result of this accident. State Farm was well aware of the financial burden that they had placed this family under by failing to pay Mr. Jimkoski benefits that he was entitled to for over 24 years following this accident.

Defendant's own case managers, were well aware that Mrs. Jimkoski was providing 24 hour care from 1976 through his death in August of 2000. Mrs. Jimkoski never submitted an Affidavit or request for attendant care benefits in writing to State Farm prior to 1983 because as she testified, Defendant, State Farm informed her that those were her "wifely duties." The

deposition testimony of Lilian Solzarz, one of the original adjusters, confirms that it was in fact State Farm's position not to pay people like Mrs. Jimkoski to care for their family.

State Farm was aware that Mr. Jimkoski was entitled to attendant care and room and board benefits from 1976 at 24 hours a day. For seven years, they failed to pay him any benefits whatsoever. For the next ten years, they paid \$5.00 per hour for six hours a day and then unbelievably, in February of 1994, they reduced the hours to four but gave Mr. Jimkoski a raise of one dollar per hour for grand total of \$24.00 per day. This conduct by the Defendant has been described by their own adjusters as being shocking, outrageous and fraud.

Plaintiff was submitted interrogatories which were answered with respect to attendant care benefit claims with interest, room and board benefits claims with interest and replacement service benefits with interest from 1976 through the time of Mr. Jimkoski's death. Had Defendant paid these rates, which were reasonable, necessary and related from the time of the accident through the time of Mr. Jimkoski's death, they would not be getting charged interest and the life of Mr. Jimkoski, as well as his family would have been substantially better and they would not have taken three mortgages on a formally forty acre farm, sold off 37 acres, all of their animals and all of their equipment and lived in abject poverty.

#### STANDARD OF REVIEW

A Motion for Summary Judgment on the Pleadings made pursuant to Fed. R. Civ. P. 12(c), all allegations in the complaint must be accepted as true and construed in favor the Plaintiff. Branch International Services, Inc. v Budde, 890 F. Supp. 659, 661 (E.D. Mich. 1995) aff'd 89 F.3d 832 (6<sup>th</sup> Cir. 1996). The court's inquiry on such a motion is limited to

whether the challenged pleadings set forth allegations sufficient to establish the elements of a legal right to relief. When matters outside of the pleadings are presented and not excluded by the court, the motion is to be treated as one for summary judgment pursuant to Fed. R. Civ. P. 56. To demonstrate a genuine issue of material fact and dispute, the non-moving party must present sufficient evidence upon which a jury could reasonably find for the non-moving party. Lawrence v. Syms Co. Corp., 969 F. Supp. 10114, 10117 (E.D. Mich. 1997).

### LAW & ARGUMENT

Plaintiff originally filed this claim in Wayne County Circuit. Defendant, State Farm, removed this action alleging diversity of citizenship as well as the amount in controversy. Plaintiff has filed a detailed complaint as well as attaching documents and exhibits to bring the folly of Defendant's handling of this claim to their attention. In 1973, the Michigan Legislature adopted the No Fault Act. The Michigan No Fault Act provided for the payment of benefits to an insured such as Mr. Jimkoski if they are injured arising out of the use, operation or maintenance of a motor vehicle as a motor vehicle. The standard or threshold for collecting the benefits, is that Mr. Jimkoski must show that the benefits are reasonable, necessary and related to the automobile accident.

Following this accident, Mr. Jimkoski was a patient at St. Mary's Hospital in Saginaw. If it were not for the care being provided by his wife and family, Defendant, State Farm would have had to continue to pay for institutionalized care at a much greater rate. (*See Exhibit D*).

In 1973, when the legislature in Michigan adopted the No Fault Act, it had been lobbied for and the subject of much debate within the insurance industry, including State Farm. Prior to

the adoption of the No Fault Act, Defendant, State Farm, and other third party insurers would have paid first party benefits as part of the tort system. As a result of the adoption of the No Fault Act and in partilar, MCL 500.3107 which provides that personal injury protection benefits are payable for:

“allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person’s care, recovery or rehabilitation.”

Plaintiff’s counsel finds it disingenuous that Defendant, State Farm, a rather sophisticated insurance company, would make the argument that they were not aware that they owed these benefits, even though it was in the statute, until 1979 when a Michigan Court of Appeals case Visconti v Detroit Auto Interinsurance Exchange, 90 Mich App 477 (1979) concluded that a wife was to be compensated at the same rate as someone else for providing services under the No Fault Act.

Defendant, State Farm, being a sophisticated insurance company apparently is claiming that they were not able to refer to the Michigan Worker’s Disability Compensation Act MCL 418.315 as the Visconti court did and draw the comparison that spouses were entitled to receive payment for services provided under the Worker’s Disability Compensation Act and therefore, should also be entitled to receive compensation under the No Fault Act.

Defendant next cites and argues Vanmarter v American Fidelity Insurance Fire Insurance Co., 114 Mich App 171 (1982) was a case of first impression for the payment of services rendered by a mother to an incapacitated minor. The mother was providing meals in bed, bathing, escorting to doctor’s appointments, assisting with doctor’s instructions,

administering medication and providing various speech and physical therapy. The court in Van Marter concluded that these services were compensable pursuant to MCL 500.3107(a). Again, it would be very disingenuous of this Defendant to make this type of an argument after having lobbied for the adoption of the No Fault Act and fighting over the language to be included within the Act to indicate that they were not aware that the Act provided for the payment of services when rendered and did not exclude a class of providers (such as a spouse).

**II Plaintiff's claim is not barred by the one year period of limitations set forth in MCL 500.3145.**

Defendant, State Farm does not make the argument to this court that Mr. Jimkoski's claims for benefits through his estate are barred by the one year period of limitations set forth in MCL 500.3145(1). The reason Defendant, State Farm, does not make this argument, is because they are aware that it would fail. The Michigan Legislature adopted the Revised Judicature Act MCL 600.5851(1) which provides a tolling provision to the statutes of limitation in the State of Michigan for minors or people who are insane at the time the claim accrues. Defendant does not make the argument that Mr. Jimkoski recognized and/or understood his legal rights. The evidence and testimony is all to the contrary.

**ARGUMENT A**

Patricia Jimkoski, as the Personal Representative of the Estate of Alger Anthony Jimkoski, is entitled to pursue this claim for benefits and the estate is entitled to the insanity tolling provision to pursue this claim.

Defendant recognizes that the Michigan Court of Appeals in Hogan v Allstate Insurance Co., 124 Mich App 465 (1983) concluded that the Revised Judicature Act Tolling

Provision suspends the No Fault Act one year limitations period. Despite this knowledge, Defendant attempts to argue that Mrs. Jimkoski is somehow making a claim individually for these benefits. The caption to this case reads: "Patricia Rae Jimkoski, Personal Representative of the Estate of Alger Anthony Jimkoski, Deceased, a Legally Incapacitated Adult". There is no claim that has been brought individually by Mrs. Jimkoski now nor has there been one that was brought in the past. Plaintiff has submitted interrogatory answers indicating that Mr. Jimkoski was entitled to 24 hour attendant care, room and board benefits as well as replacement service benefits, all of which went unpaid, or were paid in an extremely low rate from the time of the accident until his death. Nowhere in Defendant's motion is there an indication that Mr. Jimkoski was not entitled to 24 hour care; nowhere in Defendant's motion is there an indication that he was not entitled to room and board benefits; and nowhere in their motion, is it indicated by Defendant that Mr. Jimkoski was not entitled to replacement services as a result of injuries sustained in the 1976 automobile accident. In fact, Defendant indicates that it is "undisputed that Alger Jimkoski was provided daily meals from the time of his hospital discharge until the time of his death and it is further undisputed that Mrs. Jimkoski was the one providing those meals and benefits to him.

Defendant argues that Mrs. Jimkoski is, in essence, attempting to negotiate a claim which was not recognized by the Michigan Appellate Courts until the Visconti Decision. Nothing could be further from the truth. Defendant is aware that under Michigan Law, the right to collect no fault benefits belongs to the insured. Section 3112 of the No Fault Act states in pertinent part:



“Personal protection insurance benefits are payable to or for the benefit of an injured person or, in the case of his death, to or for the benefit of his dependents.”

In AETNA v. Starkey, 116 Mich App 640 (1982) Michigan Court held that the injured person is the “real party in interest” to a certain recovery of medical expenses under Section 3107(a).

This doctrine was also recognized in Gieger v DAIE, 114 Mich App 283 (1982) leave denied 417 Mich 865 (1983), in which the court held that an injured person may commence suit in his own name upon reaching the age of majority as to medical expenses incurred during his minority. Also, in Commire v Auto Club Insurance Association, 183 Mich App 299 (1990) the court dealt with a claim of minor for no fault benefits and held the right to collect the benefits belongs to the minor, and the insurer is not discharged of its obligations to the minor by paying the minor’s parents.

The real party and interest in this lawsuit is the Estate of Alger Jimkoski. Defendant is well aware of this fact but nevertheless, has disingenuously represented to this court that this lawsuit has been filed by Mrs. Jimkoski to collect benefits personally for herself, which Defendant is aware under the No Fault Act she would be incapable of collecting. Defendant, however, argues that Mrs. Jimkoski who was the spouse, should somehow be considered a health provider similar to the University of Michigan Hospital or the Detroit Medical Center. Defendant, without support, makes the bold argument that Mrs. Jimkoski is attempting to renegotiate payment of benefits that were never paid and were never properly paid.

Plaintiff has deposed each of the adjusters that are competent and/or alive that have

handled this claim and not one adjuster has testified that it was handled properly. Marcia Kiewitt was an adjuster handling the Jimkoski file. In her deposition, she testified that in order for an insured to negotiate a claim, they would have to know what their rights and/or obligations were. Otherwise, she indicated you would be bargaining from a disadvantage. Mrs. Kiewitt also testified that as an adjuster for 29 years with State Farm, that she knew that the benefits belonged to the insured, not the spouse and not the provider. She testified to the following:

Q I'm asking you to answer the question, that you understand that only Mr. Jimkoski under the No Fault Act and under the State Farm policy could negotiate away any rights he had to benefits?

A Yes I understand that.

*(Please see Group Exhibit G).*

Mrs. Kiewitt was also asked with respect to the discovery in 1983 that Mrs. Jimkoski had been providing services to her husband and that her husband had not been paid since the date of the accident, whether or not there was an interest charge that should be applied and whether or not back benefits were owed. Mrs. Kiewitt testified that both interest and back benefits would be owed. She was asked:

Q And it would be fraud for an adjuster or an insurance company that knows that they owe these people benefits going back from 1983 to 1976, not to tell them what they are entitled to before they start to negotiate that debt?

A Yes.

Q Mr. and Mrs. Jimkoski, if they were aware that they were owed \$70,000.00 wouldn't have taken a settlement of \$2,697.00 would they? . . . You wouldn't have, would you?

A No.

Q You'd think somebody stealing from you?

A Yes.

Q From an objective standpoint trying to be objective, would you agree that the payment of \$2,697.00 for a benefit that could be as much as \$70,000.00 on its face is unfair?

A Yes.

*(Please see Group Exhibit G).*

Mrs. Kiewitt testified that the behavior and handling of this claim was unreasonable and outrageous and could be considered fraudulent. *(Please see Group Exhibit G).*

Whether Mrs. Jimkoski was actively involved in providing care and services to her husband is irrelevant to Defendant State Farm's obligation to pay no fault benefits to Mr. Jimkoski. Mrs. Jimkoski neither contractually nor legally under the laws of the State of Michigan was able to negotiate any benefits or any claims on behalf of her husband. It was not until the death of her husband that Mrs. Jimkoski was appointed personal representative and had any legal capacity to deal with guardianship and/or conservatorship issues.

Defendant asks this court as a last ditch effort to disregard the decision of Geiger and Manley as Defendant feels they were decided wrongly. This Court, sitting in a diversity action is to look at the case law and the statutes of the State of Michigan and apply those to this case without speculating and/or judicially legislating decisions.

Defendant also argues that the rationale behind the limitations period set forth in MCL 500.3145 is to prevent stale claims. It should also be pointed out and argued to this court that

the rationale behind the RJA 600.5851(1) is to prevent unscrupulous people such as this Defendant from taking advantage of people like Mr. Jimkoski, who due to mental problems, is unable to understand and/or recognize his legal rights and be unfairly and illegally denied benefits that he would otherwise be entitled to.

### **ARGUMENT B**

State Farm is estopped from asserting the Statute of Limitations as a defense.

Plaintiff has alleged, in addition to the insanity tolling provision of the Revised Judicature Act that Defendant be estopped from asserting the one year back rule because of the fraudulent acts of the Defendant in failing to properly inform Mr. and Mrs. Jimkoski of the benefits that they were entitled to. In Johnson v State Farm Mutual Automobile Insurance Co. 183 Mich App 752 (1990), Plaintiff, Bill Johnson was killed in a motorcycle accident on September 2, 1984 with an uninsured motored vehicle. Within twenty four hours of the accident, his widow notified State Farm of his death and sought benefits under the State Farm policy. The Defendant State Farm filed a Motion for Summary Disposition based upon the one year back rule under the No Fault Act. In Johnson, the Defendant State Farm argued that Plaintiff would have to have specifically filed a claim for survivor's loss benefits under the automobile no fault policy. The Court of Appeals disagreed and held:

“We do not believe it necessary for an insured to specifically inform the insurer of those portions of specific insurance policies under which the insured demands the payment of benefits. Rather, we believe that all an insured can reasonably be expected or required to do is inform the insurer of the specific loss for which the benefits were sought. That is once the Defendant was aware that Plaintiff's decedent was involved in a fatal accident and that Defendant had the highest priority for payment of no fault benefits under that automobile policy issued to

the decedent, Defendant should have processed a survivor's loss claim on behalf of the Plaintiff. Thus, once Defendant received sufficient information to be informed the Plaintiff suffered a compensable loss, the one year back rule was tolled until such time as the Defendant formally denied the payment of benefits under the policy." Johnson at 762.

The Johnson court went on to discuss the purposes behind the enactment of the no fault system, namely, to reduce automobile accident litigation, and the court indicated:

"The corollary to these principals is that first party claims ought to be paid by and insurance company without the necessity of the involvement of attorneys. However, it defies common sense to expect that most lay persons possess a sufficient level of sophistication with insurance matters in the no fault statute to be able to specifically inform their insurance companies of which benefits they believe they are entitled to receive under their insurance policies.

Rather what can reasonably be expected of insureds is that they can inform their insurance agent of the occurrence of an insured loss and specifically inform the insurer of the nature of the losses suffered, such as death . . . an insured then should be able to reasonably rely on the agent to advise the insured of the benefits to which the insured might be entitled to and provide the insured with appropriate claims forms to be filed. Put another way, with respect to first party benefits, the insured and the insurer are not supposed to be adverse parties. To hold otherwise, would be to ignore the primary purpose of the no fault system; namely to provide for prompt and efficient payment of benefits . . . had the legislature intended that an insured would have to fight for the payment of benefits, it presumably would have been content with keeping the tort system. Johnson at 763-764.

The Johnson court indicated that:

to rule in Defendant's favor would serve as an endorsement for an insurance company to willfully withhold information from its insured, namely, what first party benefits the insured might be entitled to, in hopes that the insured will not discover on his own what specific benefits under the policy he is entitled to receive. To allow insurance companies to engage in such maneuvering would be inconsistent with the purposes underlying the No Fault Act. Simply put, it is insurer's obligation under the No Fault Act to insure that its insureds receive prompt and fair payment of benefits to which the insured's are entitled without undue delay or the necessity of litigation or even the need to retain counsel. To

this end, we hold that the one back rule is tolled from the time that an insured notifies his insurer of a specific loss which the insurer, knows or have reason to know, is compensable under a policy issued by the insurer to the insured until such time as the insurer either 1) formally denies coverage under the policy or 2) specifically advises its insured that he may be entitled to benefits under a policy issued by the company and specifically advise the insured to file a claim, providing the insured with any forms necessary to file such claim. Johnson at 765.

Defendant, State Farm never informed Mr. Jimkoski of his entitlement to receive attendant care benefits for the care provided by his wife and family, Defendant also did not inform Mr. Jimkoski of his entitlement to room and board benefits or replacement service benefits. As the court indicated in Johnson, Supra, to allow this Defendant to engage in such maneuvering would be inconsistent with the purposes underlying the Fo Fault Act.

The statute of limitations for a claim of fraud in Michigan uses the discovery accrual rule. The Discovery Accrual Rule applies to determine when Michigan Statute of Limitations for fraud accrues.

Failure to disclose a material fact necessary to prevent a false impression is as much a fraud as positive misrepresentation. It is not essential that the pretenses by which a fraud is accomplished be expressed in words. Michigan National Bank v Marston, 29 Mich App 99 104 (1970). In Michigan, even without a fiduciary relationship, a party is under a duty to use diligence in making a complete disclosure of fact where partial disclosure may convey false impressions and mislead the Plaintiff. Such half truths or non-disclosures are considered to be concealment of facts and therefore, misrepresentations. Groening v Opsata, 323 Mich 73 (1948).

In Hearn v Rickanbacker, 140 Mich App 525 (1985), Michigan Court of Appeals saw that there was a relationship of trust and confidence between an insurer and its insured which, although the relationship is not a fiduciary one, gives right to a duty for the insurer to deal fairly with its customers apart from any contractual obligations owed. The court in Hearn, cited with approval, Drouillard v Metropolitan Life Insurance Co., 107 Mich App 608 621 (1981):

“ . . . there is a relationship of trust and confidence which the court will recognize as sufficient to permit an action for fraud to be predicated upon misrepresentation.”

It is black letter law in Michigan that whether or not there is fraud is a question of fact for the trier of fact as opposed to a question of law. Fraud is a question of fact to be deduced from all of the circumstances. Courtland Manufacturing Co. v Plat, 83 Mich 419 (1890); Krause v Arthur Murray Studios of Michigan, Inc., 2 Mich App 130 (1965). Michigan courts have long recognized the claims for fraud and claims being brought by persons who were unable to recognize and understand their legal rights have no statute of limitations as long as the mental disability and/or fraud continues.

Defendant repeatedly points out the fact that they had received one letter from an attorney, George Joachim, who allegedly represented Mr. Jimkoski. Michigan courts have held that the statute of limitations has not necessary begin running on the appointment of guardian or a next friend. Klosky v Dick, 359 Mich 615 (1960). Likewise, the limitation period does not begin to run when an attorney is retained. Davidson v Baker-VanderVeen Construction Co., 35 Mich App 293 (1971). The letter from Mr. Joachim is irrelevant and immaterial to any of the issues to be decided pursuant to this motion.

### **III State Farm Has Failed To Fulfill Its Legal Obligations With Plaintiff's Claims For Wage Loss Benefits, Replacement Services and Medical Mileages.**

Again, Defendant attempts to make a very disingenuous argument to this court that as a sophisticated insurance company, that it was not aware that the Michigan No Fault Act provided for the payment of all "allowable expenses consisting of all reasonable charges insured for reasonably necessary products, services and accommodations for an injured persons care, recovery and rehabilitation." Defendant is attempting to argue that they were unaware that replacement services and medical mileage were benefits that Mr. Jimkoski was entitled to. This simply is not the case. These were benefits that were available as third party benefits under the prior tort system before the adoption of no fault. Further, even if the court were to believe the Defendant's argument, it is irrelevant as there is no statute of limitations defense available to the Defendant. If there is no statute of limitations defense available, Plaintiff is entitled to claim these benefits going back to the date of this accident.

### **III Plaintiff's Complaint Should Not Be Dismissed Because The Remedies Are Afforded Under Michigan Law**

A) Plaintiff Will Withdraw Their Claim Of Liability Pursuant To The Michigan Consumer Protection Act.

B) Michigan Law Does Support A Claim For Bad Faith Breach Of An Insurance Contract.

It is Plaintiff's position that Defendant, State Farm acted in bad faith. Plaintiff has already presented testimony to this court from Defendant's own adjusters indicating fraud unreasonableness and outrageous conduct on the part of State Farm. Defendant is right in pointing out that the Michigan Courts in decisions following Kewin v Massachusetts Mutual



Life Insurance Co., 409 Mich 401 (1980) have held that in order to proceed on a claim for bad faith breach of an insurance contract, Plaintiff must produce evidence indicating that there was a tort-independent of the breach. Plaintiff's claim for bad faith breach of the insurance contract is not based merely on the fact that Defendant refused to pay benefits to Mr. Jimkoski. As Plaintiff has already pointed out to this court, Defendant's own adjusters have been deposed and have testified that the conduct of State Farm Insurance Company was outrageous, unreasonable and fraudulent. In 1983, when Defendant was aware that Mr. Jimkoski was entitled to be paid for attendant care benefits, instead of doing the correct thing and paying both past and present benefits, Defendant, State Farm Insurance Company committed further acts of fraud in failing to disclose to Mr. Jimkoski that he was entitled to be compensated going back to 1976 for those benefits and that he was entitled to receive compensation for room and board as well replacement services. Defendant, State Farm continued this fraud until Mr. Jimkoski's death in August of 2000.

- C. Plaintiff Withdraws Their Claim Of Tortious Interference With A Contract.
- D. Plaintiff Withdraws Their Claim For Intentional Infliction And Emotional Distress.
- C. Plaintiff Withdraws Their Claim For Violation Of The Michigan Trade Practices Act.

### CONCLUSION

Based upon the case law and evidence presented, it is clear that this claim is being brought by the Estate of Alger Jimkoski. Defendant does not dispute the fact that Mr. Jimkoski suffered horrendous and catastrophic injuries in this automobile accident that rendered him unable to recognize and understand his legal rights. Defendant further does not dispute the fact that Mrs. Jimkoski was not paid anything for her care and treatment of Mr. Jimkoski from 1976

through 1983. Defendant admits to having paid only \$5.00 per hour for six hours a day from 1983 through 1994 and \$6.00 per hour for a total of \$24.00 per day from 1994 through Mr. Jimkoski's death in 2000.

Although the amounts paid for these services are not a subject this motion, they clearly show the outrageous and unreasonable position of Defendant, State Farm, with respect to this claim. There is no case law in the State of Michigan to indicate that Mr. Jimkoski's claim is barred by the Statute of Limitations. Defendant even agrees that the Revised Judicature Act applies to this claim. The Michigan No Fault Act specifically indicates that the benefits belong to Mr. Jimkoski. His estate has properly brought this claim to collect benefits that were not paid and/or benefits that were underpaid.

Plaintiff respectfully requests this Honorable Court deny the Defendant's Motion as it is unwarranted based upon these facts and case law presented.

Respectfully submitted,

**THOMAS, GARVEY, GARVEY & SCIOTTI**



**JAMES McKENNA (P41587)**

Attorney for Plaintiff

24825 Little Mack

St. Clair Shores MI 48080

586-779-7810

Dated: October 9, 2003

**CERTIFICATE OF SERVICE**  
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on Oct 9 2003

By: ☒ U.S. Mail ☐ FAX  
☐ Hand Delivered ☐ Overnight Courier  
☐ Certified Mail ☐ Other:

Signature 

**AFFIDAVIT OF DR. RAYMOND MERCIER**

STATE OF MICHIGAN )  
                                  )SS  
COUNTY OF MACOMB)

I, Raymond Mercier, being first duly sworn, deposes and says:

1. That I am a licensed psychiatrist practicing in the State of Michigan.
2. That Alger Jimkoski was a patient of mine and I was the treating psychologist for him.
3. That Alger Jimkoski suffered a severe closed head injury, traumatic brain damage and significant neurological damage to the frontal lobe of his brain as a result of an automobile accident that he was involved in in October of 1976.
4. That during my care and treatment of Mr. Jimkoski, it became apparent to me that he was in need of having a guardian and/or conservator to attend to his affairs.
5. That during the time period that I treated Mr. Jimkoski, it was apparent to me that he would not have meaningfully understood and comprehended his legal rights and therefore, it was necessary for him to have a legal guardian and/or conservator taking care of his affairs for him.

Further, deponent sayeth not.

Subscribed and sworn to before me  
this 7 day of May, 2002

Patricia Klos  
Notary Public

Raymond Mercier, MD  
RAYMOND MERCIER

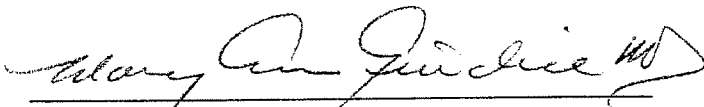
**AFFIDAVIT OF DR. MARY ANN GUIDICE**

STATE OF MICHIGAN )  
                                  )SS  
COUNTY OF MACOMB)

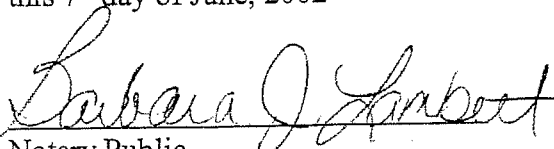
I, Mary Ann Guidice, being first duly sworn, deposes and says:

6. That I am a licensed neurologist practicing in the State of Michigan.
7. That Alger Jimkoski was a patient of mine.
8. That Alger Jimkoski suffered a severe closed head injury and traumatic brain damage as a result of an automobile accident that he was involved in in October of 1976.
9. That as a result of my care and treatment of Mr. Jimkoski, it became apparent to me that he suffered from mental and emotional injuries related to his automobile accident that prevented him from understanding and comprehending his legal rights.

Further, deponent sayeth not.

  
\_\_\_\_\_  
Mary Ann Guidice

Subscribed and sworn to before me  
this 7<sup>th</sup> day of June, 2002

  
\_\_\_\_\_  
Notary Public

**BARBARA J. LAMBERT**  
Notary Public, Wayne County, MI  
Acting in Macomb County  
My Commission Expires Oct. 31, 2002

## Page 49

[1] Q Were you aware then that your \$30 a day was based on \$5 an  
 [2] hour, 6 hours a day?  
 [3] A Yeah.  
 [4] Q Before '83 when this started, did you ever claim attendant  
 [5] care services to State Farm?  
 [6] MR. McKENNA: It's been asked and answered in the  
 [7] previous deposition. She told you that she was informed  
 [8] that State Farm wouldn't pay for those services, that it  
 [9] was a spouse's duties.  
 [10] Q My question is, did you ever claim that to State Farm?  
 [11] MR. McKENNA: Go ahead and tell him.  
 [12] A They told me that it was my wifely duties.  
 [13] Q Okay. By them saying it was your wifely duties, that means  
 [14] a discussion was held. Did you bring up that discussion  
 [15] about being compensated for helping out Mr. Jimkoski?  
 [16] A I don't know who did it, how it came out. I don't know how  
 [17] it ever was mentioned.  
 [18] Q Okay. So you don't recall going to State Farm and saying,  
 [19] "I am providing these health aide type services for my  
 [20] husband. And I want to get paid for that"?  
 [21] A I don't recall that.  
 [22] Q You don't recall ever doing that before 1983; correct?  
 [23] A No.  
 [24] Q Do you recall ever putting something in writing basically  
 [25] indicating that--

## Page 50

[1] A Before--  
 [2] Q -- before 1983?  
 [3] A No.  
 [4] Q Is it that you did not mention these aide duties that you  
 [5] were providing because you weren't aware that this was  
 [6] something that could be compensated?  
 [7] MR. McKENNA: Objection as to the form of the  
 [8] question. It's not clear to me what you're asking about.  
 [9] Q Do you understand the question?  
 [10] A Not really.  
 [11] Q You testified that you did not state to State Farm, nor did  
 [12] you put in writing before 1983 that you were providing  
 [13] these nursing aide duties for your husband; is that  
 [14] correct?  
 [15] A Yeah, I never wrote down anything like that. I don't  
 [16] recall.  
 [17] Q Okay. So, my question to you is, do you know why you never  
 [18] asked State Farm verbally or in writing before 1983?  
 [19] MR. McKENNA: Well, wait a minute. That's not what  
 [20] she said, and it's a mischaracterization of the testimony.  
 [21] She's indicated that there was a discussion--  
 [22] MR. JAREMA: Counsel,--  
 [23] MR. McKENNA: Don't interrupt me.  
 [24] MR. JAREMA: -- are you--  
 [25] MR. McKENNA: Don't interrupt me.

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[1] MR. JAREMA: All right. Now--  
 [2] MR. McKENNA: Don't interrupt me, please. She's  
 [3] already answered that there was a conversation. She  
 [4] doesn't recall whether she started it or State Farm did.  
 [5] Now you've taken and twisted whether or not she put  
 [6] something in writing. And you're completely  
 [7] mischaracterizing the testimony. And my objection is  
 [8] necessary because it is a mischaracterization. Please  
 [9] don't interrupt me.  
 [10] Q Did you have a conversation with State Farm before 1983  
 [11] where you requested to be compensated for nursing aide  
 [12] services given to your husband?  
 [13] A I don't recall.  
 [14] Q When you began receiving \$30 a day in 1983, how long did  
 [15] that continue?  
 [16] A Starting in '83 until when the aides came in. The aides  
 [17] got paid for their duties. I didn't get paid. I only got  
 [18] paid for the days when the aides did not show up.  
 [19] Q Okay. So therefore in 1983 when you started getting \$30 a  
 [20] day, there were no aides that were coming to the house at  
 [21] that point; correct?  
 [22] A No.  
 [23] Q Okay. Is that correct?  
 [24] A Yes.  
 [25] Q Okay. Later on, aides started coming and helping out?

## Page 52

[1] A Yes.  
 [2] Q Okay. What year was that?  
 [3] A I don't recall the actual year.  
 [4] Q How long after you started getting \$30 a day until the  
 [5] aides started coming in?  
 [6] A I don't know.  
 [7] Q Okay. Were the first aides that were coming in through  
 [8] Allen Health Care?  
 [9] A Yes.  
 [10] Q And then later through Heartland--  
 [11] A Yes.  
 [12] Q -- Home Care?  
 [13] A Yes.  
 [14] Q Were any aides being provided by any service before Allen  
 [15] Health Care?  
 [16] A No.  
 [17] Q Was it years from the time you started getting \$30 a day  
 [18] until an aide started showing up at the house to provide  
 [19] services?  
 [20] MR. McKENNA: I'm sorry. Did you say "years"?  
 [21] MR. JAREMA: "Years."  
 [22] A Years? You're recalling from '83?  
 [23] Q Right.  
 [24] A Until they started?  
 [25] Q Correct.

## Page 53

- [1] A I don't recall what year they started.
- [2] Q Okay. My question is-- you told me you don't recall the
- [3] year they started.
- [4] A Right.
- [5] Q Was it years in between? Are we talking about it started
- [6] the next day? It started the next week, the next year, the
- [7] next five years?
- [8] A I can't recall how many years it was.
- [9] Q You can't give any estimate as to the-- it could have been
- [10] one day, is what you're saying, afterwards? —
- [11] A Oh, no.
- [12] Q Okay. So it's longer than a day?
- [13] A It's longer than a year, too.
- [14] Q Okay. And it's longer than a year. That's why we're
- [15] trying to get a feel here. Okay. Longer than a year after
- [16] he first started that these aides start-- do you have any
- [17] idea other than that how long it was?
- [18] A Possibility of '89. Don't know for sure.
- [19] Q Okay. When you first started getting the \$30 a day, did
- [20] State Farm also pay you for any services that you were
- [21] performing before that for your husband, these health aide
- [22] type services?
- [23] A Before what?
- [24] Q Let me repeat the question.
- [25] MR. McKENNA: I think rephrasing it might help, but--

## Page 54

- [1] Q Let me rephrase the question. You started getting this
- [2] aide payment of \$30 a day in 1983; correct?
- [3] A Right.
- [4] Q Okay. At that time, did you also receive any payment from
- [5] State Farm for any aide services you provided before then?
- [6] A No.
- [7] Q Okay. Did State Farm-- strike that. Did you ever--
- [8] strike that. Once you started receiving \$30 a day for aide
- [9] care, did you ever make a claim with State Farm for the
- [10] aide care that you were doing before that period of time?
- [11] A No. Because I trusted State Farm.
- [12] Q Okay. Any reason why you didn't make a claim for aide
- [13] services before that time?
- [14] MR. McKENNA: She did make a claim. She was told that
- [15] they wouldn't provide it.
- [16] MR. JAREMA: Counsel, form and foundation, please.
- [17] MR. McKENNA: No. Stating a question's been asked and
- [18] answered. I've got two different transcripts here. And I
- [19] don't intend to have you go back over the same things
- [20] again. You've asked this in two prior depositions, and
- [21] you've asked it again here today. Please go on to
- [22] something you haven't asked her.
- [23] Q Can you answer the question?
- [24] A If I did, I don't recall. And I was told it was my wifely
- [25] duties. Before '83, I had children from 6 on up to 17. A

## Page 55

- [1] mother-- I was supposed to be a wife, which I was never a
- [2] wife after the accident. Because there was no happiness
- [3] there. There was no lovemaking, there was nothing. I was
- [4] totally cut off of a woman. And I had to take care of my
- [5] husband. I had to take care of my children. I had to take
- [6] care of my household. I had to take care of my little
- [7] farm. And I think that's all in the depositions. Now, I
- [8] think I've been through hell, and I think my husband went
- [9] through hell and-- been degraded. My children were all
- [10] degraded. They didn't have no father. They didn't have no
- [11] father upbringing. Daddy was never there. He was there,
- [12] but he didn't help them. They'd ask him questions, he
- [13] didn't know nothing. And when they'd-- he couldn't
- [14] understand it he'd get angry at them. It was no-- no
- [15] father there.
- [16] MR. McKENNA: You need to relax. We're going to take
- [17] a break.
- [18] A Yeah, I'm going to take a break if you don't mind.
- [19] Q No problem.
- [20] (Off the record)
- [21] MR. JAREMA: Back on the record.
- [22] Q On January 22nd in a prior deposition your attorney entered
- [23] what was marked as Deposition Exhibit Number 9.
- [24] MR. McKENNA: I entered it?
- [25] Q I'll be handing that to your attorney.

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- [1] MR. McKENNA: Taras, you said I entered it? I didn't
- [2] enter any exhibits in any prior depositions.
- [3] MR. JAREMA: This deposition exhibit is marked January
- [4] 22nd.
- [5] MR. McKENNA: I understand that. Your question said,
- [6] "Your attorney entered an exhibit." I didn't enter any
- [7] exhibits. I haven't questioned my client yet.
- [8] MR. JAREMA: I'm talking about entered this exhibit in
- [9] a prior deposition.
- [10] MR. McKENNA: Her prior deposition?
- [11] MR. JAREMA: In a prior deposition.
- [12] MR. McKENNA: All right. Well, I think you need to
- [13] explain that to her, because she doesn't know about any
- [14] prior depositions.
- [15] MR. JAREMA: I'm letting her know that now. And here
- [16] is a copy for you, besides giving a copy to her.
- [17] (Counsel hands document to witness and counsel)
- [18] Q On January 22nd in a deposition that your attorney took of
- [19] Lillian Solarz--
- [20] MR. McKENNA: January 2nd (sic) of this year. Not
- [21] some-- so you understand what he means by that.
- [22] Q This was previously marked as Deposition Exhibit Number 9.
- [23] I'm going to ask you about page one, first, of that
- [24] deposition, if you'd please look that over, the deposition
- [25] exhibit.

## Page 61

- [1] A **Yes, I probably did. And the bank's name was on it. Go**  
 [2] **back in your records and check them.**  
 [3] Q Okay. And did you take-- since the bank name was on  
 [4] there, did you take that check to the bank and offer it as  
 [5] the payoff on your car loan?  
 [6] A **Yeah, I imagine. It's too long to remember.**  
 [7] MR. McKENNA: Nice of you to document these acts of  
 [8] fraud for me.  
 [9] Q You indicated you must have had a conversation with Lillian  
 [10] Solarz regarding the full settlement of past home nursing  
 [11] care. What do you remember out of that conversation?  
 [12] A **That she was going to pay me \$30 a day to help us out and**  
 [13] **to help pay the car off a little bit. And then she was**  
 [14] **continuing to pay the \$30 a day to help with Alger's**  
 [15] **medical assistance.**  
 [16] Q And that \$30 would continue; correct?  
 [17] A **Until-- yeah. And it did continue.**  
 [18] Q But specifically the question was, the conversation  
 [19] regarding the full settlement of past home nursing care,  
 [20] what do you remember of that conversation?  
 [21] A **I don't.**  
 [22] Q Are you saying that it was never discussed between you and  
 [23] someone at State Farm regarding full settlement of your  
 [24] past home nursing care?  
 [25] A **I don't remember it.**

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- [1] MR. McKENNA: Counsel, do you have release that was  
 [2] approved by the probate court, or a release that was signed  
 [3] by Mr. Jimkoski? Let the record reflect that Mr. Jarema is  
 [4] not producing a document, nor has he answered the question.  
 [5] MR. JAREMA: Let me mark this Deposition Exhibit-- I  
 [6] believe this would be Exhibit Number 11, a home medical  
 [7] care service form. And I ask that that exhibit be entered.  
 [8] (Deposition Exhibit 11 marked)  
 [9] (Counsel hands document to witness)  
 [10] Q Did you have a chance to look at that form?  
 [11] A **This one (indicating)?**  
 [12] Q Yes.  
 [13] A **I wrote them up for every time I did it. There was always**  
 [14] **something else added to that list.**  
 [15] Q I'm sorry?  
 [16] A **There was always something else added to that list. It**  
 [17] **said custodian care. That means complete care on his care.**  
 [18] MR. McKENNA: Wait until he asks you a question, Pat.  
 [19] WITNESS: Okay.  
 [20] Q So you're saying you of course filled this form out;  
 [21] correct?  
 [22] A **Yeah.**  
 [23] Q Okay. It's dated December 20th, '86?  
 [24] A **That's what it says.**  
 [25] Q And you filled out many similar forms; correct?

## Page 63

- [1] A **Yeah.**  
 [2] Q And did anyone else in your family fill out this form other  
 [3] than you?  
 [4] A **A couple of my children probably did.**  
 [5] Q Okay. Do you recall any of your children filling out this  
 [6] form?  
 [7] A No.  
 [8] Q Did you ever help any of your children fill out this form?  
 [9] A **I showed them how to do it when I did it.**  
 [10] Q Are you saying that there were forms that your children--  
 [11] filled out?  
 [12] A **I don't know. If there are, they should be in the papers.**  
 [13] Q This form, on line seven, indicates rate of pay per day as  
 [14] being \$30; is that correct?  
 [15] A Yes.  
 [16] Q Did you ever send in a form indicating more than \$30?  
 [17] A **When?**  
 [18] Q At any time.  
 [19] A **I don't recall at the hand (sic).**  
 [20] Q Did you ever tell State Farm that the \$30 that was being  
 [21] paid to you for these services was not enough?  
 [22] A **I don't recall.**  
 [23] Q Did you ever request of State Farm, either written or  
 [24] verbally, for more than \$30 a day?  
 [25] A No.

## Page 64

- [1] Q And why is that?  
 [2] A **Because I trusted State Farm, and that's all they said I**  
 [3] **got paid.**  
 [4] Q Okay. Who--  
 [5] A **And that's all they-- I don't recall the adjuster, but**  
 [6] **they said \$30 would be for helping Alger and the rest was**  
 [7] **my wifely duties. Now, I couldn't tell you which one it**  
 [8] **was.**  
 [9] Q Okay. Are you saying now that when you were told about the  
 [10] \$30 a day that you'd be getting, that you were also told at  
 [11] that time that it was your wifely duty?  
 [12] A **I don't remember that part of the situation.**  
 [13] Q You earlier testified you have no idea as to who or when  
 [14] that was told to you; is that correct?  
 [15] A **Right.**  
 [16] Q Regarding the wifely duties?  
 [17] A **Right. It was before the-- before this started, I**  
 [18] **believe.**  
 [19] Q And by "this started," you mean in 1983 when the--  
 [20] A Yes.  
 [21] Q -- \$30 a day was being offered?  
 [22] A Yes.  
 [23] Q And you have no idea as to who or, other than that time  
 [24] frame, when it was said; is that correct?  
 [25] A **That's correct.**

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[1] were in error?

[2] **MR. McKENNA:** That were fraud, misrepresentation? Do

[3] you know what "error" means in the context of his question?

[4] If you do, go ahead and answer it.

[5] **WITNESS:** Not-- that's why I'm looking at him kind of

[6] funny. I don't understand the--

[7] Q What don't you understand about "error"?

[8] A **What error? What kind of error are you looking for?**

[9] Q That State Farm would have been wrong in saying that.

[10] A **In saying what? That it was wifely duties?**

[11] Q Right. You said you felt that was wrong; correct?

[12] A **Right.**

[13] Q Okay. Is there anything else that State Farm said to you

[14] that you felt was wrong regarding your claim?

[15] A **No.**

[16] **MR. McKENNA:** By the way, same objections. Go ahead.

[17] Q Did you feel that any statement made-- strike that. Was

[18] there anything-- strike that. Did State Farm ever tell

[19] you not to sue them?

[20] **MR. McKENNA:** Objection; calls for hearsay. But go

[21] ahead.

[22] A **I don't recall if they did.**

[23] Q Okay. Is there anything you recall State Farm telling you

[24] which led you to believe that you should not sue them?

[25] **MR. McKENNA:** Objection; calls for a legal conclusion,

## Page 94

[1] also contains hearsay. You can go ahead and answer if you

[2] understand his question.

[3] A **Repeat that question again.**

[4] Q Sure.

[5] **MR. JAREMA:** Would you repeat that question, please?

[6] (Playback of previous question)

[7] **MR. McKENNA:** Same objection. Go ahead, ma'am.

[8] A **I don't know.**

[9] Q Is there any specific action that State Farm did other than

[10] the wifely duties thing that you described that made you

[11] feel that State Farm was not telling you what your benefits

[12] were?

[13] **MR. McKENNA:** Same objection. Do you understand it?

[14] **WITNESS:** Yeah, but I don't know how to answer it.

[15] **MR. McKENNA:** Take your time.

[16] A **Didn't give me too much. I can't answer it.**

[17] Q Is that because you can't think of any other instance?

[18] **MR. McKENNA:** No. Boy. Objection as to form and

[19] foundation. She told you she can't answer the question.

[20] Q Why can't you answer it?

[21] A **It involves too many things.**

[22] Q Well, what are the many things that you have a problem

[23] with?

[24] A **Well, first of all I trusted State Farm. They told me I'd**

[25] **get only \$30 a day. And they didn't tell me of any of**

## Page 95

[1] **Alger's benefits other than the hospital bill, the doctor**

[2] **bills and the medicine and if it was necessary for him to**

[3] **have, like, some other kind of medical help due to an**

[4] **accident. And other than that, I trusted State Farm. And**

[5] **I really didn't know none of the legal things that we could**

[6] **have had. Everybody kept telling us. But we didn't know.**

[7] **MR. McKENNA:** I don't want you talking about anything

[8] that I kept telling you about. All right?

[9] **WITNESS:** Okay.

[10] Q So then I take it, other than what you just said, that you

[11] trusted them and they told you about the \$30 a day?

[12] A **That's all I was entitled to.**

[13] **MR. McKENNA:** That's what they told you?

[14] **WITNESS:** Yes.

[15] Q And who told you that?

[16] **MR. McKENNA:** It's been asked and answered.

[17] A **Whoever wrote this up.**

[18] Q I don't understand that answer.

[19] A **Right there (indicating). Lillian Solarz.**

[20] Q And is there anything else other than what you have just

[21] said?

[22] **MR. McKENNA:** Anything else what, other than what she

[23] just said?

[24] **MR. JAREMA:** That State Farm specifically--

[25] **MR. McKENNA:** No, that wasn't the question. That

## Page 96

[1] wasn't the question. You asked who said this about the

[2] \$30. That was the question. She pointed to Lillian

[3] Solarz. Now you're saying, "Is there anything else?" It's

[4] an improper question. Object as to the form and

[5] foundation. It's vague, ambiguous, it assumes things that

[6] have not been expressed on the record.

[7] Q Other than the wifely duties you discussed and Solarz

[8] indicating that you were entitled to \$30 a day only, was

[9] there anything else that State Farm specifically did?

[10] A **I answered.**

[11] **MR. McKENNA:** And the answer that they failed to tell

[12] her what all of her benefits were. You're leaving a lot

[13] out.

[14] Q Was there anything else, ma'am?

[15] A **Just what I told you. They didn't tell me no benefits that**

[16] **I needed or I could get or anything.**

[17] Q Other than you being an insured of State Farm, did you have

[18] any other relationship that you know of that created some

[19] kind of a special relationship between you and State Farm?

[20] **MR. McKENNA:** Objection; calls for a legal conclusion,

[21] foundation. Do you understand his question? Do you know

[22] what he means by "special relationship"?

[23] **WITNESS:** He wanted to know--

[24] **MR. McKENNA:** Do you know what he means by it?

[25] **WITNESS:** Not really.



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- [1] discussed from the time you first saw him after the  
 [2] accident until his death?  
 [3] A **Rephrase that.**  
 [4] Q The problems that we have just discussed that existed after  
 [5] the accident that didn't exist before the accident, did  
 [6] your husband have all of those problems from the time you  
 [7] first saw him after the accident until his death?  
 [8] A **Yes.**  
 [9] Q Did any of them get worse?  
 [10] A **Right along.**  
 [11] Q Following the automobile accident, did somebody from State  
 [12] Farm Insurance Company contact you about your husband's  
 [13] medical care, your husband's condition, things like that?  
 [14] A **No.**  
 [15] Q Okay. Did you contact State Farm?  
 [16] A **Yes.**  
 [17] Q When you contacted State Farm, did you ask State Farm for  
 [18] assistance?  
 [19] A **I don't recall.**  
 [20] Q Did you ask them to explain to you, to help you with your  
 [21] claim; your husband's been in an accident, "I need to  
 [22] report it," and that you wanted their help?  
 [23] A **I just got a lawyer.**  
 [24] Q Okay. The lawyer was for the car accident.  
 [25] **MR. JAREMA:** Objection; leading question.

## Page 110

- [1] Q The lawyer that you had was to sue the driver of the other  
 [2] car?  
 [3] A **Yes.**  
 [4] **MR. JAREMA:** Objection; statement by counsel.  
 [5] Q You didn't hire a lawyer to take care of any claims with  
 [6] State Farm, did you?  
 [7] **MR. JAREMA:** Objection; leading question.  
 [8] A **No.**  
 [9] Q When you contacted State Farm initially, did you rely on  
 [10] State Farm to tell you what you and your husband were  
 [11] entitled to, as far as benefits under your auto policy?  
 [12] A **Yes.**  
 [13] Q Did State Farm--  
 [14] **MR. JAREMA:** Objection; leading question.  
 [15] Q Did State Farm tell you what all of your benefits were that  
 [16] you were entitled to under the policy?  
 [17] **MR. JAREMA:** Objection; foundation.  
 [18] A **No.**  
 [19] Q Did you only learn after you hired an attorney what all of  
 [20] your benefits were?  
 [21] A **Yes.**  
 [22] **MR. JAREMA:** Objection; leading question.  
 [23] Q Prior to finding out what all of your benefits were from  
 [24] discussion with counsel, did you rely upon the  
 [25] representations of State Farm and its agents to explain to

## Page 111

- [1] you what all of your no-fault benefits were that you and  
 [2] your husband and your family were entitled to?  
 [3] A **Yes, we did.**  
 [4] Q At some point in time after the accident you had a  
 [5] discussion with State Farm regarding attendant care?  
 [6] A **Yes.**  
 [7] Q Did State Farm tell you that they would not pay a spouse to  
 [8] provide attendant care?  
 [9] A **Yes.**  
 [10] **MR. JAREMA:** Objection; leading question.  
 [11] Q Did you rely upon the representations of State Farm that in  
 [12] fact they did not owe that to you and/or your husband or  
 [13] your family?  
 [14] A **That's right.**  
 [15] **MR. JAREMA:** Same objection.  
 [16] Q At some point in time after the accident, in-- I believe  
 [17] it was 1983-- State Farm contacted you again regarding  
 [18] attendant care; is that correct?  
 [19] A **Yes.**  
 [20] Q Until that time you had relied upon every representation  
 [21] that State Farm had made regarding attendant care?  
 [22] A **Yes.**  
 [23] **MR. JAREMA:** Objection; leading question.  
 [24] Q And as a result of their representations to you, you  
 [25] weren't submitting claims to them, were you?

## Page 112

- [1] **MR. JAREMA:** Objection; leading question.  
 [2] A **No.**  
 [3] Q They told you you couldn't make the claim; correct?  
 [4] A **That's right.**  
 [5] **MR. JAREMA:** Objection; leading question.  
 [6] Q In 1983 they indicated that they were going to start paying  
 [7] you for attendant care; is that correct?  
 [8] A **That's right.**  
 [9] **MR. JAREMA:** Objection; leading question.  
 [10] Q As a result of them indicating that they were going to pay  
 [11] you attendant care in 1983, did they tell you that there  
 [12] was a dollar amount that they were going to pay? Or did  
 [13] they ask you how much you would like to be paid?  
 [14] A **They made the arrangements on the amount that they were**  
 [15] **going to pay me.**  
 [16] Q Did they tell you that under the No-Fault Act that that was  
 [17] all that you were entitled to?  
 [18] **MR. JAREMA:** Objection; leading question.  
 [19] A **No.**  
 [20] Q Did they tell you that that was all that under the No-Fault  
 [21] Act that you were entitled to be paid, the \$30 a day?  
 [22] A **That's all they told me that they could pay me.**  
 [23] Q Okay. So did you have an understanding at that time as to  
 [24] whether or not you were entitled to receive more than \$30 a  
 [25] day from State Farm?

## Page 113

- [1] A No.
- [2] Q Because of what they represented to you, is it your
- [3] understanding that \$30 was all that you were entitled to?
- [4] A Yes.
- [5] MR. JAREMA: Objection; leading question.
- [6] Q What was your understanding as to how much you were
- [7] entitled to as a result of the representations of State
- [8] Farm?
- [9] MR. JAREMA: Basically counsel-- by first asking the
- [10] leading question and then asking it in another way,
- [11] counsel's already suggested the answer to his client. So
- [12] it would be all part of the leading question.
- [13] MR. McKENNA: Thank you, Judge.
- [14] Q Go ahead. Can you answer the question? Do you remember
- [15] the question?
- [16] A No.
- [17] Q That's why he does this, and he does it too much. I'll
- [18] have the patience, we'll persevere. As a result of the
- [19] representations of State Farm, did you have an
- [20] understanding of whether you were entitled to be paid more
- [21] than \$30, less than \$30, or only \$30?
- [22] MR. JAREMA: Same objection.
- [23] A Only \$30.
- [24] Q And as a result of that representation, that you were only
- [25] entitled to \$30, did you make a claim with State Farm for

## Page 114

- [1] more than that until this lawsuit was filed and your
- [2] husband had died?
- [3] A (No verbal response)
- [4] Q I'll withdraw the question. I'll restate it. As a result
- [5] of them telling you you're only entitled to \$30, did you
- [6] ever ask State Farm to pay you more than what they told you
- [7] was the maximum they would pay?
- [8] A I don't recall.
- [9] Q Until this lawsuit?
- [10] A Until this lawsuit.
- [11] Q At some point in time you did ask State Farm to pay you for
- [12] rent while you were in Florida?
- [13] A Yes.
- [14] MR. JAREMA: Objection; leading question.
- [15] Q Did they pay it?
- [16] A No.
- [17] Q And State Farm hired Ann Lorentzen. Is that your
- [18] understanding?
- [19] A Yes.
- [20] Q And she, as far as you knew, was State Farm?
- [21] A State Farm rep.
- [22] MR. JAREMA: Objection; leading question.
- [23] Q Was it your understanding that Ann Lorentzen and State Farm
- [24] were working either together or for each other?
- [25] MR. JAREMA: Objection; leading question.

## Page 115

- [1] A They were working together.
- [2] Q And when you advised Ann of things, did that go back to
- [3] State Farm?
- [4] A It was supposed to, yes.
- [5] MR. JAREMA: Objection; foundation.
- [6] Q And who explained that to you?
- [7] A That's what she did.
- [8] Q Okay. Who explained that to you?
- [9] A She did.
- [10] Q There was an adjuster that you had on this case prior to
- [11] 1983 that told you that anything with respect to attendant
- [12] care were wifely duties; is that correct?
- [13] MR. JAREMA: Objection; leading question.
- [14] A Yes.
- [15] Q Did you understand under the No-Fault Act or did they show
- [16] you under the No-Fault Act or within the State Farm policy
- [17] where it said wifely duties were your obligation?
- [18] A No.
- [19] MR. JAREMA: Objection; compound question and leading
- [20] question.
- [21] Q And as a result of their telling you that attendant care
- [22] benefits were wifely duties, did you rely upon that
- [23] information?
- [24] A Yes.
- [25] Q Did you, as a result of your reliance on that, not make a

## Page 116

- [1] claim for other attendant care benefits until after 1983?
- [2] A Yes.
- [3] MR. JAREMA: Objection; leading question.
- [4] Q Did State Farm in 1983 tell you that they knew that if you
- [5] and your family were not providing care for your husband
- [6] that he would be placed into a medical institution? Did
- [7] they tell you that?
- [8] A Yes.
- [9] Q State Farm told you that? Or the doctors told you that?
- [10] A Doctors told me that.
- [11] Q And my question is, in 1983 did State Farm tell you that
- [12] they were aware that because of the care and treatment that
- [13] you were providing to your husband, that if that stopped,
- [14] your husband would be placed into a medical institution?
- [15] Did they tell you that?
- [16] A No.
- [17] MR. JAREMA: Asked and answered.
- [18] Q You knew what your husband's condition, physical and
- [19] mental, was in 1983; correct?
- [20] A Yes.
- [21] Q And had it stayed the same from when you first saw him
- [22] after the accident until then?
- [23] MR. JAREMA: Objection; leading question.
- [24] MR. McKENNA: It's not a leading question, Counsel. I
- [25] suggest you look in the Rules of Evidence because you're

## Page 125

- [1] taking care of your husband on your own?
- [2] **MR. JAREMA:** Objection; leading question.
- [3] **A Yes.**
- [4] **Q** Did you at one point tell Dr. Mercier that there was only
- [5] one of two ways that you would get any peace and sanity as
- [6] a result of what happened to you?
- [7] **A Yes.**
- [8] **Q** Did you tell them that either you would die and you
- [9] wouldn't have to worry about taking care of your husband,
- [10] or he would die--
- [11] **A That's right.**
- [12] **Q** -- and you'd no longer have to take care of him?
- [13] **A That's right.**
- [14] **Q** And to your knowledge was all of the records from Dr.
- [15] Mercier made available to State Farm?
- [16] **A Yes.**
- [17] **MR. JAREMA:** Objection; lack of foundation.
- [18] **Q** Now, in 1983 there was an indication in the IRA,
- [19] International Rehabilitation Associates, report that they
- [20] came to your home to evaluate the care that you were giving
- [21] to your husband and how he was doing?
- [22] **A Yes.**
- [23] **Q** At that point in time it's indicated in that report that
- [24] you had a farm; correct?
- [25] **A Yes.**

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- [1] **Q** And that since 1976 when your husband's accident occurred,
- [2] you had not been able to work outside of the home; is that
- [3] correct?
- [4] **MR. JAREMA:** Objection; foundation.
- [5] **A That's right.**
- [6] **Q** And that since 1976 State Farm had not paid you for taking
- [7] care of your husband; is that correct?
- [8] **A That's right.**
- [9] **Q** And since 1976 you had to sell off farm equipment?
- [10] **A Right.**
- [11] **Q** You had to sell off livestock?
- [12] **A Yes.**
- [13] **MR. JAREMA:** Continuing objection as to foundation.
- [14] **Q** Did you have to--
- [15] **MR. JAREMA:** I'm not giving you a continuing objection
- [16] to anything.
- [17] **Q** You had to sell off land?
- [18] **A Yes.**
- [19] **MR. JAREMA:** Same objection.
- [20] **Q** And in addition to selling off the land you had to encumber
- [21] your land with additional liens and mortgages?
- [22] **A Yes.**
- [23] **MR. JAREMA:** Same objection.
- [24] **Q** Did State Farm pay you anything from 1976 through 1983 for
- [25] you taking care of your husband?

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- [1] **A No.**
- [2] **Q** Did they send anybody to your home for that seven years to
- [3] take care of your husband?
- [4] **A No.**
- [5] **Q** Did they tell you that you were entitled to have somebody
- [6] there to take care of your husband during that time period?
- [7] **A No.**
- [8] **Q** As a result of State Farm's-- strike that. As a result of
- [9] your being misinformed by State Farm as to what your
- [10] benefits were and what you were entitled to, did that cause
- [11] you to suffer additional emotional distress over and above
- [12] what your family went through because of the injuries to
- [13] your husband?
- [14] **A Yes.**
- [15] **MR. JAREMA:** Objection to foundation, also leading
- [16] question.
- [17] **Q** Did you need to seek counseling as a result of the actions
- [18] of State Farm?
- [19] **A Yes.**
- [20] **Q** Were there times following 1976--
- [21] **MR. JAREMA:** Objection; leading question.
- [22] **MR. McKENNA:** Are you clairvoyant? Do you want to
- [23] finish the question for me now, and see if you get it
- [24] right? Or are you just being rude?
- [25] **MR. JAREMA:** I was trying to put that objection in for

## Page 128

- [1] the last question.
- [2] **MR. McKENNA:** So you thought that it would be a good
- [3] place to put it in the middle of the next question? You're
- [4] doing such a great job for State Farm.
- [5] **Q** Were there times after the accident in 1976 through 1983
- [6] where as a result of State Farm's failure to pay you
- [7] benefits for what you did, that your children, yourself and
- [8] your husband suffered financially?
- [9] **A Yes.**
- [10] **MR. JAREMA:** Objection; leading question.
- [11] **Q** Even when there were people that were sent to your home to
- [12] care for your husband, was it necessary for you to
- [13] supervise them because of complaints your husband had about
- [14] their care?
- [15] **A Yes.**
- [16] **Q** So it was necessary for you to be there to make sure that
- [17] they were providing the care in an appropriate, safe
- [18] manner?
- [19] **MR. JAREMA:** Objection; leading question.
- [20] **A Yes.**
- [21] **Q** Did your husband indicate to you that he had been caused
- [22] pain as a result of the activities of nurses--
- [23] **A Yes.**
- [24] **Q** -- that were sent to the home?
- [25] **A Yes.**

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1 to 1989 that family members were entitled to be  
2 compensated for case workers, did you treat that  
3 information in the same way that you treated the  
4 information from the attorney regarding room and board?

5 MR. JAREMA: Objection, Counsel, as  
6 to facts not in evidence. You just said she became  
7 aware of family members are supposed to be compensated  
8 for case workers. She never said that.

9 THE WITNESS: I don't remember.

10 MR. MCKENNA: Backup, because I  
11 think she did, but I'm not going to argue with you.

12 BY MR. MCKENNA:

13 Q. You became aware while you were adjusting claims prior  
14 to 1989 as you indicated I think it was a change or  
15 something in case law that said family members could be  
16 compensated as case workers, correct?

17 A. No, they could hire their own case workers.

18 Q. Hire their own and be paid for it.

19 Are you aware of a decision that  
20 says family members cannot be paid for being case  
21 workers?

22 A. No.

23 Q. If State Farm can hire a case worker and pay market  
24 rates, is it your understanding now that family members  
25 can hire case workers and pay market rates?

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1 Q. With respect to case workers you would have said you  
2 wouldn't pay for a case worker that wasn't hired by you  
3 initially, correct?

4 MR. JAREMA: Objection, asked and  
5 answered, also the attorney is now testifying again on  
6 his own behalf, mischaracterization. You're  
7 mischaracterizing her testimony.

8 BY MR. MCKENNA:

9 Q. Go ahead.

10 A. I don't know on that part of it. I guess I'm getting  
11 confused by your question.

12 Q. You said at some point in time you learned that  
13 somebody other than you could hire a case worker?

14 A. Yes.

15 Q. Prior to that would it have been your position that  
16 only State Farm could hire the case worker and that the  
17 insured could not?

18 A. I don't know because the issue never came up.

19 Q. On any file that you had?

20 A. No.

21 Q. Okay. It did come up though that the case worker could  
22 be hired by this insured before you were done adjusting  
23 claims?

24 A. I believe so, yes.

25 Q. Okay. And at that point in time it's a medical benefit

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1 MR. JAREMA: Objection, asked and  
2 answered.

3 THE WITNESS: Yes.

4 BY MR. MCKENNA:

5 Q. If a family member can hire a case worker at market  
6 rates, why couldn't a family member not hire a family  
7 member, why could an insured not hire a family member  
8 to do the work of a case worker?

9 A. I don't know.

10 Q. There's nothing that you're aware of in the No-Fault  
11 Act that says that they can't?

12 A. Not that I'm aware of.

13 Q. Okay. Have you received a directive while you were an  
14 adjuster from State Farm telling you that family  
15 members cannot hire case workers that are family  
16 members?

17 A. Not that I remember.

18 Q. Now, if we covered this correctly, initially your  
19 position with State Farm that you told insureds was, we  
20 wouldn't pay for attendant care with family members,  
21 correct?

22 A. Correct.

23 Q. And with respect to room and board, you didn't know one  
24 way or the other, correct?

25 A. Correct.

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1 that the insured would be entitled to understand their  
2 policy for a case worker at market rates, correct?

3 MR. JAREMA: Objection, asked and  
4 answered.

5 THE WITNESS: Yes.

6 BY MR. MCKENNA:

7 Q. And there's no reason to believe that the case worker  
8 couldn't be a family member in the No-Fault Act or a  
9 directive from State Farm, correct?

10 MR. JAREMA: Objection, foundation.

11 THE WITNESS: Not that I'm aware  
12 of.

13 BY MR. MCKENNA:

14 Q. So if a family member was providing those benefits as a  
15 case worker, the only thing that you would need to do  
16 as an adjuster upon learning that, would be to find out  
17 what the market rate would be in order to compensate  
18 them. Would you agree with that?

19 MR. JAREMA: Objection as to the  
20 foundation, also the form of the hypothetical, assumes  
21 facts not in evidence. Also this client has already  
22 indicated to you she didn't know the answer to your  
23 question and now you're just going around that. Her  
24 answer to you before the last five minutes was --

25 MR. MCKENNA: I don't need you

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## CLAIM ACTIVITY LOG

Claim Number 22-1332-061

DATE	TIME	INITIALS	
3-25-83	12:30P	LTB	Request with per person mass-mail
3-25-83	1:00P	LTB	585-422N 210 <sup>00</sup> 051-2 Left a message for Lynn Inghelt of IRA to call for referral. Advised EIP of pending IRA referral.
3-25-83	2:00P	LTB	Lynn Inghelt of IRA called - took referral. She will also set up auditing last FH acct.
4-12-83	9:30A	LTB	Lynn Inghelt, RN, Supt. Howard - we discussed film yesterday. We are in the process of purchasing a commode, wheelchair + twin bed. Inghelt called this AM + requested two sup checks payable to Senior Retreat Co. Request with per person mass-mail
4-12-83	9:40	RL	of benefits -
4-12-83	10:00A	LTB	585-747N 09 <sup>00</sup> 051 585-749N 213 <sup>50</sup> 051
4-12-83	11:00	RL	Pro & Vic.
4-20-83	1:30	RL	Have reviewed RA's lengthy report closely. Excellent job by Lynn. I concur with all recommendations she sets forth. Make sure she understands the Drug Store acct - is for prescribed drugs only. It is the obvious Mrs. Jim Koski has been a nurse to this EIP since the accident and we have paid nothing for these services. From this date on we will pay \$30. per day. For past services rendered we will pay for this car - required to get him out from the Dr. etc.

DEPOSITION  
EXHIBITSOLARZ - #6  
1-2203 6 SK

000937

AIM ACTIVITY LOG

Claim Number

DEPOSITION  
EXHIBIT

SOLAKZ-#7

Received Notice of Loss

1-22-03

SK

DATE	TIME	INITIALS	
			The payoff is \$2697.62. If it were not for the wife we would have to maintain E/P in a medical facility. The charges for the eye dr. & periodontist will be covered. Simply issue draft to Patricia Jankowski for Car pay-off 051-2#2697.62. Don't include bank on draft. - Simply indicate for past Medical Nursing Care.
1-27-83	1:00P	LTB	Request auth per payment - med
1-27-83	1:10	RH	Pay & benefits
1-27-83	1:30P	LTB	628-071N 2697 <sup>62</sup> 051-2
			628-072N 19,927 <sup>42</sup> 051-2
			628-073N 239 <sup>09</sup> 051-2
			628-074N 104 <sup>92</sup> 051-2
			628-075N 85 <sup>00</sup> 051-2
			CIB update requested.
1-27-83	2:00	RH	Proc y/c
1-25-83	11:00A	LTB	Request auth per payment - med.
1-25-83	11:10	RH	Pay & benefits
1-25-83	11:30A	LTB	628-351N 616 <sup>32</sup> 051-2
1-25-83	1:00	RH	Proc y/c
1-28-83	10:00A	LTB	Request auth per payment - med.
1-28-83	10:15	RH	Pay & benefits
1-28-83	10:30A	LTB	628-692N 934 <sup>02</sup> 051
			628-693N 2368 <sup>00</sup> 051
			628-694N 537 <sup>53</sup> 051
1-31-83	11:00	RH	Proc y/c

000936

# PROGRESS REPORT



international rehabilitation associates inc  
rehabilitation services

To State Farm 4074 Linden Rd Flint Mi. 48507		Attention Of Lillian Solarz	
From 5090 West State Street, Building A, Suite 103, Saginaw, MI 48603		Region Saginaw	
Specialist Lynne Tonsfeldt, R.N., CCRN	Your File Number 22-1332-061	Date of Event 10-26-76	
Disability Head injury with chronic post traumatic stress disorder	IRA File Number ECO 0159	Date of Report 4-11-83	
Client Name, Address Alger Jimkoski 1946 Stoddard Port Austin, Mi. 48467		Employer/Insured	
Phone SS# 373-32-8271			

**DEPOSITION  
EXHIBIT**

SOLARZ #3  
1-22-03 SK

To implement a Rehabilitation Plan, we make the following Recommendation(s):

1. Is the client medically stable? Medically the client is stable. Mentally and emotionally he is not stable.
2. Has the client been released to return to work? Not applicable
3. What are the client's limitations/restrictions? Physical limitations: limited vision, poor balance, blackout spells, chronic pain limiting activities, bowel and bladder incontinence, clumsiness and ataxia. Mental limitations: impaired reasoning, memory and understanding what is read. Emotional limitations: labile emotions, profound depression
4. Will the client return to work with the same employer? No.
5. Target date for return to work? Client may never resume productive work. Client will be assisted in engaging in hobby within next 90 days.

## NARRATIVE:

## MEDICAL

Mr. Jimkoski still suffers the after effects of the severe head injuries he received in the 1976 accident. The physical complaints include:

1. chronic headaches
2. back, neck and joint pain
3. numbness and loss of sensation in much of body resulting in clumsiness
4. loss of vision in one eye and impaired vision in other eye
5. "blackout spells" during which he falls
6. Poor balance
7. urinary and fecal urgency with occasional incontinence
8. loss of smell and taste
9. softening of teeth and gums due to dilantin for seizures
10. possible TMJ temporal mandibular joint dysfunction from grinding teeth
11. hypoglycemia from stress reaction
12. sexual dysfunction

From listening to the client discuss his multiple symptoms and complaints, it appears that some of these are a direct result of the head injury and are going to be permanent impairments. It seems that some of these are directly related to the anxiety, stress and depression which has resulted from the greatly altered lifestyle of the client.

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APR 18 1983

LB

May 5, 1997



Anne M. Lorentzen  
Consultant In Charge

Tena Shelski  
State Farm Insurance Company  
PO Box 640  
Flint, MI 48507

RE: Claimant: Alger Jimkoski  
Your File No.: 22-1322-061  
Date of Injury: 10/26/76  
Our File No.: 382-3893



SOLARZ - #4  
1-22-03 / SK

### HISTORICAL EVENT REPORT

This consultant received a referral for the purpose of case management on April 25, 1988. He had been hospitalized at Beaumont Hospital from April 13, 1988 through April 26, 1988 by Raymond Mercier, MD, psychiatrist. He had been hospitalized due to explosive temper outbursts that were uncontrollable and violent. It is said that he had threatened to kill his wife and had been very angry at a son-in-law. His wife had feared for her life and Dr. Mercier arranged the hospitalization. The admitting diagnosis was acute agitation and the discharge diagnosis was acute explosive outbursts, organic personality, closed head injury, neck and back pain. I met with Mr. and Mrs. Jimkoski at their home on May 10, 1988.

On October 26, 1976 when the claimant was 41 years old, he was involved in an accident. According to the Application for Benefits, he was driving a tractor on Stoddard Road when a pick-up truck struck him from the rear. Apparently it was in the evening as there is a statement that the tractor had lights on it when it left home and the accident occurred approximately 1/4 mile away from home. The initial diagnosis was head injury and multiple fractures and he was treated by Malcolm Field, MD, neurosurgeon at St. Mary's Hospital, Saginaw, Michigan.

The claimant was unemployed at the time of the accident and had been a janitor for Paper Roll Products from October, 1975 to August 13, 1976. He also was a self employed farmer during this time period.

Dr. Raymond Mercier apparently has been involved with Alger's care since April, 1978 when he had been hospitalized at Harper Hospital on the neurology service. At that time it was felt that his problems were emotional rather than neurological and he was in the psychiatric unit for several weeks, being following on an outpatient basis every three to four weeks almost since that time period. The Harper admission note of January 9, 1979 recaps the accident in that he was unconscious and required emergency medical care for several weeks. There was a severe concussion and a period of coma that may have been up to three weeks. Dr. Mercier goes on to list the following as his findings in the past or current problems at the time of the January, 1979 hospitalization:

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1. Detached retina, right eye and right optic nerve injury
2. Irritability with angry outbursts
3. Loss of control of urine as a result of a neurogenic bladder
4. Neck and back pain
5. No sense of taste or smell
6. Loss of sense of feeling over the entire body
7. Hypoglycemia secondary to stress of the accident of 1976
8. Emotional deterioration reducing performance in verbal and performance IQ
9. Passive, dependent personality
10. Massive psychophysiologic reaction with anxiety and depression
11. Traumatic neurosis
12. Bilateral cerebral dysfunction secondary to closed head injury
13. Moderate degenerative changes in the cervical spine and thoracic/lumbar spine
14. Depressive reaction, severe

EEG done during the hospitalization was said to be normal and as prior EEGs had been. The audio invoked potential was also reported to be essentially negative. A consultation was done by a psychiatrist and it was his opinion that the claimant's main problem was secondary to the neurosis and that he would not benefit from physical therapy for the chronic lumbosacral strain. Although the claimant reports that his balance was markedly impaired and that he frequently fell or tripped on small objects, Dr. Elmagradi did not find that in the physical examination that he did on January 15, 1979.

The claimant was examined by Nicholas N. Velarde on December 7, 1979 and it was his impression that the claimant had multiple cranial nerve injuries as a result of the accident being optic neuritis, involvement of smell and taste and that the memory loss and drastic personality changes were probably a result of the contusion to the frontal and temporal lobes. He indicated that the long term prognosis was guarded to poor and that the claimant's disability would be permanent and require long-term treatment.

The claimant has had a number of psychological evaluations in 1977 the impression was bilateral cerebral dysfunction, severe reactive depression, organic personality changes secondary to frontal and temporal load trauma and the major complication to treatment would be the psychiatric condition.

Dr. Field's discharge summary of November 15, 1976 indicated that he sustained multiple contusions, abrasions and a right frontal orbital skull fracture with brain contusion. The discharge diagnosis was frontal basilar skull fracture, cerebral contusion and multiple contusions/ abrasions.

There were numerous dental problems including cyst formation in the maxilla due to the trauma of the accident as well as the result of the Dilantin therapy. The claimant was unable to wear dentures and there was a high rate of tooth decay. As a result it was Dr. LeVasseur's recommendation that dental implants be done once the procedure was available for use.

From the medical records we were unsure when whirlpool therapy was started in an attempt to relieve his complaints of cervical, thoracic and lumbar discomfort, but Dr. Mary Ann Gaducci does make mention of it in the May 20, 1986 correspondence when he was requesting a bath whirlpool tub for his home. It was at that time that the wife reported an incontinence of stools and his complaints that the right side of his body was going numb although there is mention that in August, 1985 that he had again struck his head. At that time, Dr. Gaducci felt that he was functioning at a cognitive level of VII/VIII on the Rachos Los Amigos scale as it relates to his head injury. Her examination revealed some hysterical symptoms and she questioned if he was having reoccurrent seizures.

In Dr. Mercier's correspondence of June 6, 1986 he indicates that his current diagnosis was organic personality syndrome (310-10) and this is described as a person who has a personality change secondary to a distinct brain injury. He indicated that he would never totally recover and that he was using medications in an attempt to control his irritability, intense anxiety and anger.

January 6, 1986, he was admitted to the hospital by Dr. Mercier with a diagnosis of post-traumatic stress disorder, chronic on admission and on final diagnosis he included severe cervical and lumbar arthritis, possible TMJ joint dysfunction, closed head injury, seizure disorder and depressive reaction. On discharge, he had a home physiotherapy program and was to have been on a hypoglycemic diet as tolerated. He felt the claimant was severely disabled as a result of the accident of 1976 and will need ongoing psychiatric care indefinitely.

The claimant was admitted to an inpatient cognitive restructuring program on December 20, 1984 and apparently discharged against medical advice on May 18, 1984. The admission was the result of the wife no longer being able to cope with the multiple problems that were occurring in the home. It is said that gains were made in treatment as they addressed memory skills, behavior management, fine motor control, reality orientation and analytic thinking skills. It was questionable if on discharge the home environment would be able to maintain the program needs.

With this report I am enclosing a copy of the initial intake summary from Total Therapy Management as it describes his manipulative character and the inconsistencies with assessment as well as the neuropsychological testing that was done.

In 1984 hearing evaluations were done and it was determined that there was an organic cause for the hearing loss for which hearing aides prescribed and he continues to wear today.

Mr. Jimkoski continues to see the following physicians on a regular basis:

1. Raymond Mercier MD for medication changes in an attempt to control his anger, irritability and at times reactive personality.

When I met with the claimant and his wife on July 11, 1988 Dr. Mercier was involved for the psychiatric issues, Dr. Gaducci was managing the medications relative to the head injury and his involvement in the inpatient treatment program, Dr. Mercier as a family physician, Dr. Cady relative to the multiple eye problems and Dr. LeVasseur relative to the dental problems. He was being transported to his physician's appointments by "Give a Lift", Royal Oak, Michigan. The home care agency was providing respite services four hours a day, four days per week to assist him with those activities including bathing, light meal preparation and the exercise routine that has been ongoing for years. In addition the wife was being paid for those services that she was providing to him on a daily basis.

Over the years we have been able to reduce the services provided on a daily basis through medical evaluations by Dr. Kenneth Richter and it has been a combination of services via the wife or the home care agency. Recently the wife has resumed the four hours per day and she is being paid \$6.00 per hour. The level of care is unchanged and based on safety issues due to decreased sensation and include assisting him with his bath and performing the home therapy program that has been in place for years. She also is responsible for transporting him to Dr. Kube's appointments rather than using Thumb Area Transit which had been previously arranged and picking up his medications on a regular basis. what she views as being a rest.

There have been no hospitalizations since 1988 for any problem. He has difficulty with bronchitis There have been numerous medication changes by Dr. Mercier in an attempt to control his anxiety and anger. Dr. Mercier has seen him approximately one time a month and there have been no hospitalizations since 1988 although Mrs. Jimkoski has repeatedly asked Dr. Mercier and this consultant to arrange an inpatient stay for being a heavy smoker for a long period of time and Dr. Kube prescribes medications on a regular basis for him. Due to the multiple reports of "blacking Dr. Kaul's recommendations have been to increase the Depakote although there was no seizure activity noted on the EEG, Depakote does have action on the temporal lobe which may also help to temper the anger and outbursts.

The dental implants were done by Dr. James King and he sees him every six months the check the dental work and in between as needed due to teeth loosening from the bridge or breaks in the bridge structure.

#### IMPRESSION:

Alger has not changed since 1988 and medical records prior to the date were indicating that they did not feel significant changes were to be made, but rather an attempt to control the anger and outbursts. Unfortunately, Mrs. Jimkoski is also angry with the loss in their life since 1976 and the extra burdens that have been hers due to the husband's multiple problems. In that his Social Security Disability is based on 1976 rates with COLAs over the years, they have lost the farm due to back taxes and have a home and three acres mortgaged to meet their daily needs. Mrs. Jimkoski has been his guardian and conservator since 1976 or 1977.

1 after that's discovered, State Farm would have  
2 owed Mrs. Jimkoski, just taking State Farm's  
3 numbers, the \$30.00 a day for the last seven  
4 years, wouldn't they?  
5 MR. JAREMA: Same -- well,  
6 objection as to the form of the hypothetical, and  
7 also as to foundation. Also as to asking for a  
8 legal conclusion.  
9 Q (Continuing by Mr. McKenna) Wouldn't they?  
10 MR. JAREMA: And also asked  
11 and answered.  
12 Q (Continuing by Mr. McKenna) Go ahead, ma'am. No  
13 matter how many times he objects you're going to  
14 have to answer the question.  
15 A Yes, there was -- there -- if something was owed,  
16 it appeared to me there was something negotiated  
17 reading that log entry, but I was not there and I  
18 don't know what transpired at that point.  
19 Q Now would you agree with me that in order to  
20 negotiate something both people would have to know  
21 what they were entitled to? In other words, if we  
22 look at it in a strictly commercial sense, you'd  
23 have to know what your rights and your obligations  
24 are, and the other side would have to know what  
25 their rights and their obligations are, or

1 otherwise you'd be bargaining from a disadvantage?  
2 MR. JAREMA: Objection to  
3 foundation.  
4 THE WITNESS: Yes.  
5 Q (Continuing by Mr. McKenna) Okay. So wouldn't  
6 Mrs. Jimkoski have to know that she was entitled  
7 to have seven years back attendant care at 12  
8 percent interest on that money in order for her to  
9 know what she was negotiating away?  
10 MR. JAREMA: Objection to the  
11 form of the hypothetical.  
12 THE WITNESS: She may have. I  
13 don't know.  
14 Q (Continuing by Mr. McKenna) If she wasn't told  
15 that she was entitled to the seven years at a  
16 minimum \$30.00 per day at 12 percent interest,  
17 that would be an unfair bargaining position that  
18 State Farm took with her, wouldn't it?  
19 MR. JAREMA: Objection to the  
20 form of the hypothetical. Also lack of  
21 foundation. Also asking for a legal conclusion.  
22 THE WITNESS: Yes, it may be.  
23 Q (Continuing by Mr. McKenna) And would you agree  
24 with me that Mrs. Jimkoski cannot, under the  
25 No-Fault Act, negotiate with State Farm regarding

1 the attendant care, that the benefits belong to  
2 Mr. Jimkoski?  
3 MR. JAREMA: Objection as to  
4 asking for a legal conclusion, also foundation.  
5 THE WITNESS: I don't know  
6 whether she can negotiate or not.  
7 Q (Continuing by Mr. McKenna) You've been an  
8 adjuster for how long with State Farm?  
9 A Twenty-nine years.  
10 Q In 29 years did State Farm never tell you that the  
11 benefits belong to the insured, not their spouse  
12 and not the provider?  
13 A Yes, I understand that.  
14 Q So you understand that only Mr. Jimkoski could  
15 negotiate a settlement of any benefits owed?  
16 MR. JAREMA: Same objection.  
17 THE WITNESS: Um, I understand  
18 what you're saying.  
19 Q (Continuing by Mr. McKenna) I'm asking you to  
20 answer the question, that you understand that only  
21 Mr. Jimkoski under the No-Fault Act and under the  
22 State Farm policy could negotiate away any rights  
23 he had to benefits?  
24 MR. JAREMA: Same objection.  
25 THE WITNESS: Yes, I

1 understand that.  
2 Q (Continuing by Mr. McKenna) But if he's  
3 incompetent you wouldn't want to negotiate with  
4 him, would you?  
5 MR. JAREMA: Objection to the  
6 form of the hypothetical.  
7 THE WITNESS: No.  
8 Q (Continuing by Mr. McKenna) If he's incompetent  
9 you would want to negotiate with his wife,  
10 wouldn't you?  
11 MR. JAREMA: Objection to the  
12 form of the hypothetical. Also lack of  
13 foundation.  
14 THE WITNESS: Yes.  
15 Q (Continuing by Mr. McKenna) And it appears from  
16 your earlier answer that it appeared to you that  
17 State Farm negotiated that claim for back benefits  
18 with her?  
19 A Yes.  
20 Q And under the No-Fault Act and the State Farm  
21 policy that's improper?  
22 MR. JAREMA: Objection to the  
23 form of the hypothetical. Also asking for a legal  
24 conclusion.  
25 THE WITNESS: I don't know

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1 interrupting me earlier.

2 MR. MCKENNA: Are you  
3 continuing this dep, or are you ending it?

4 MR. JAREMA: I was just  
5 letting the client know that if the client insists  
6 on asking questions that were number one asked and  
7 answered in the first deposition --

8 MR. MCKENNA: Are you  
9 continuing the deposition, or are you ending it?

10 MR. JAREMA: We will allow the  
11 deposition to continue, counsel.

12 MR. MCKENNA: Can you read the  
13 last question back now?

14 (Whereupon the last question was read  
15 back.)

16 THE WITNESS: Yes.

17 Q (Continuing by Mr. McKenna) Now, under the  
18 No-Fault Act when it's discovered, as it was  
19 discovered in 1983, that these benefits were owed,  
20 Mr. and Mrs. Jimkoski would be entitled to an  
21 underpayment correction, wouldn't they?

22 MR. JAREMA: Objection to the  
23 form of the hypothetical. Also lack of  
24 foundation.

25 THE WITNESS: They may have

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1 they wouldn't know that somebody had taken their  
2 money, would they?

3 MR. JAREMA: Objection to the  
4 form of the hypothetical.

5 THE WITNESS: No.

6 Q (Continuing by Mr. McKenna) And it would be fraud  
7 for an adjustor or an insurance company that knows  
8 that they owe these people benefits going back  
9 from 1983 to 1976 not to tell them what they're  
10 entitled to before they start to negotiate that  
11 debt?

12 MR. JAREMA: Objection to the  
13 form of the hypothetical. Also asking for a legal  
14 conclusion. Also lack of foundation.

15 THE WITNESS: Yes.

16 Q (Continuing by Mr. McKenna) Mr. and  
17 Mrs. Jimkoski, if they were aware that they were  
18 owed \$70,000.00 wouldn't have taken a settlement  
19 of \$2,697.00, would they?

20 MR. JAREMA: Same objection.

21 THE WITNESS: I don't know. I  
22 wasn't there.

23 Q (Continuing by Mr. McKenna) You wouldn't have,  
24 would you?

25 A No.

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1 been, yes.

2 Q (Continuing by Mr. McKenna) With an interest  
3 charge?

4 MR. JAREMA: Same objection.

5 THE WITNESS: Yes.

6 Q (Continuing by Mr. McKenna) And hypothetically,  
7 if you were to have sold a house, let's say you  
8 owned it free and clear and you sold that house  
9 for \$60,000.00, or 70,000 -- we'll use the example  
10 here, 70,000 to keep it straight. If you had a  
11 \$70,000.00 house and you sold it and you put the  
12 money into escrow, and you returned to get your  
13 money and they told you that here's your money,  
14 \$2,697.00, you'd be very upset, wouldn't you?

15 A Yes.

16 Q And if they said that's all we're going to pay  
17 you, and you knew that they had \$70,000.00 of your  
18 money and were only going to pay you \$2,697.00,  
19 you'd want to call the police, wouldn't you?

20 MR. JAREMA: Objection to the  
21 form of the hypothetical.

22 THE WITNESS: Yes.

23 Q (Continuing by Mr. McKenna) Now, in the case of  
24 Mrs. Jimkoski and Mr. Jimkoski, if they weren't  
25 told that they were entitled to the \$70,000.00

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1 Q You'd think somebody's stealing from you, wouldn't  
2 you?

3 A Yes.

4 MR. JAREMA: Objection to the  
5 form of the hypothetical.

6 Q (Continuing by Mr. McKenna) From an objective  
7 standpoint, trying to be objective, would you  
8 agree that the payment of \$2,697.00 for a benefit  
9 that could be as much as \$70,000.00 on its face is  
10 unfair?

11 MR. JAREMA: Objection to the  
12 form of the hypothetical. Also lack of  
13 foundation.

14 THE WITNESS: Yes.

15 Q (Continuing by Mr. McKenna) Would you agree that  
16 it's unreasonable?

17 MR. JAREMA: Same objection.

18 THE WITNESS: Yes.

19 Q (Continuing by Mr. McKenna) Would you agree that  
20 it would be outrageous behavior?

21 MR. JAREMA: Same objection.

22 THE WITNESS: It could be  
23 construed to be that, yes.

24 Q (Continuing by Mr. McKenna) Would you agree that  
25 it is outrageous behavior?

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1 MR. JAREMA: Same objection.  
2 THE WITNESS: What do you mean  
3 by outrageous, the word outrageous?  
4 Q (Continuing by Mr. McKenna) What do you think it  
5 means? Does it shock you? Outrageous, the type  
6 of conduct that calls to mind shock and anguish  
7 immediately that you can't believe someone would  
8 do that to you.  
9 A Yes.  
10 Q That you are outraged.  
11 A Yes.  
12 Q Does it bring to mind that kind of conduct that  
13 I've just described to you, that it would be  
14 outrageous conduct?  
15 MR. JAREMA: Same objection.  
16 THE WITNESS: Yes.  
17 Q (Continuing by Mr. McKenna) No insured should  
18 ever expect that type of conduct from their  
19 insurance company, should they?  
20 MR. JAREMA: Same objection.  
21 THE WITNESS: No.  
22 Q (Continuing by Mr. McKenna) And you know in this  
23 particular case that if we took out a calculator  
24 and did the math --  
25 Why don't we do it just so

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1 everybody's on the same page. \$30.00 a day is  
2 what they were authorized for payment to 1983,  
3 correct?  
4 A Yes.  
5 Q There's 365 days in a year, correct?  
6 A Yes.  
7 Q So if you multiply 30 times 365, according to my  
8 calculations it's \$10,950.00. And we know from  
9 1983 back to 1976 we're talking about seven years,  
10 correct?  
11 A Yes.  
12 Q So if we multiply \$10,950.00 times seven, we'd  
13 have the number without any interest, correct?  
14 A Yes.  
15 Q According to my calculations it's \$76,650.00.  
16 Just assuming my calculations  
17 are accurate, there'd be \$76,650.00 in benefits,  
18 approximately, that Mr. and Mrs. Jimkoski were  
19 entitled to just using State Farm's numbers in  
20 1983 without interest?  
21 A Yes.  
22 MR. JAREMA: Objection to  
23 foundation. Also to the form of the hypothetical.  
24 Q (Continuing by Mr. McKenna) Now would you agree  
25 with me that any supervisor at State Farm, or

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1 adjuster handling this case would have been able  
2 to determine that amount?  
3 MR. JAREMA: Objection, asking  
4 for speculation. Also the same objection as  
5 before.  
6 THE WITNESS: Yes.  
7 Q (Continuing by Mr. McKenna) They would have also  
8 been able to calculate interest?  
9 MR. JAREMA: Same objection.  
10 THE WITNESS: Yes.  
11 Q (Continuing by Mr. McKenna) And knowing that it's  
12 \$76,650.00 in unpaid benefits, without interest,  
13 and knowing that that was negotiated by State Farm  
14 for \$2,697.62, is that to you outrageous?  
15 MR. JAREMA: Objection as to  
16 form of the hypothetical. Also lack of  
17 foundation.  
18 THE WITNESS: Yes.  
19 Q (Continuing by Mr. McKenna) Unreasonable?  
20 MR. JAREMA: Same objection.  
21 THE WITNESS: Yes.  
22 Q (Continuing by Mr. McKenna) Fraudulent?  
23 MR. JAREMA: The same  
24 objection. Also asking for a legal conclusion.  
25 THE WITNESS: It could be

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1 considered fraudulent.  
2 Q (Continuing by Mr. McKenna) I'm asking you, do  
3 you consider that to be fraudulent?  
4 A The way you've laid it out, yes.  
5 Q Now if it's fraud, and these benefits haven't been  
6 paid through today's date, and you discover that  
7 as an adjuster, does State Farm have a policy for  
8 correcting that?  
9 MR. JAREMA: Objection to the  
10 form of the hypothetical. Also as to foundation.  
11 THE WITNESS: To correcting  
12 fraud?  
13 Q (Continuing by Mr. McKenna) Yes.  
14 A A policy, per se?  
15 Q Yeah.  
16 A We try to correct our errors, I think.  
17 Q Okay. And how do you correct that error?  
18 A You mean by making a payment?  
19 Q I don't know, you tell me. How do you correct  
20 that kind of an error?  
21 A You see, I don't know that this was -- I don't  
22 know what took place back then. It's all  
23 speculation on my part.  
24 Q Ma'am, I'm asking you right now here today.  
25 A Yes.

33 (Pages 126 to 129)